

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*
Glenn Shankle, *Executive Director*



CCN/12362/CO

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 25, 2007

Leonard H. Dougal
Jackson Walker, LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701

RECEIVED

JUL 30 2007

TCEQ
CENTRAL FILE ROOM

RE: Northwest Grayson County WCID No. 1
CCN No. 12362

This letter is your notice that the Texas Commission on Environmental Quality (TCEQ) executive director has denied the above-named petition.

You may file a **motion to overturn** with the chief clerk. A motion to overturn is a request for the commission to review the TCEQ executive director's denial of the petition. Any motion must explain why the commission should review the TCEQ executive director's action.

A motion to overturn must be received by the chief clerk within 23 days after the date of this letter. An original and 11 copies of a motion must be filed with the chief clerk in person or by mail. The Chief Clerk's mailing address is Office of the Chief Clerk (MC 105), TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. On the same day the motion is transmitted to the chief clerk, please provide copies to Robert Martinez, Director of the Environmental Law Division (MC 173), and Blas Coy, Public Interest Counsel (MC 103), both at the same TCEQ address listed above. If a motion is not acted on by the commission within 45 days after the date of this letter, then the motion shall be deemed overruled.

Individual members of the public may seek further information by calling the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040.

Sincerely,

A handwritten signature in cursive script, reading "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/mr

cc: Blas Coy, TCEQ Public Interest Counsel (MC 103)

Kathleen Hartnett White, *Chairman*
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 25, 2007

Mr. Leonard Dougal
Jackson Walker, LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701

Re: Petition from Double Diamond, Inc., for an Expedited Release from Certificate of Convenience and Necessity (CCN) No. 12362 of Northwest Grayson County WCID 1 in Grayson County; Application No. 35564-C

CN: 600631501; RN: 101395119

Dear Mr. Dougal:

Enclosed is a certified copy of an order issued by the Commission in the above referenced application. This action is taken under authority delegated to the Executive Director of the Texas Commission on Environmental Quality.

If you have any questions, please contact Mr. Ross Henderson, by phone at 512/239-6257, or by fax at 512/239-0606, or if by correspondence, include MC 173 in the letterhead address.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Cowan".

Michael D. Cowan, Division Director
Water Supply Division

MC/BDD/fg

Enclosures

cc: mailing list

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



APPLICATION NO. 35564-C

PETITION FROM DOUBLE	§	
DIAMOND, INC. FOR AN	§	BEFORE THE
EXPEDITED RELEASE FROM	§	
WATER CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY	§	TEXAS COMMISSION ON
(CCN) NO. 12362 OF NORTHWEST	§	
GRAYSON COUNTY WCID NO. 1 IN	§	
GRAYSON COUNTY;	§	ENVIRONMENTAL QUALITY
APPLICATION NO. 35564-C	§	

ORDER

Double Diamond, Inc., ("Petitioner" or "DDI") applied to the Texas Commission on Environmental Quality (TCEQ) for an expedited release from Northwest Grayson County Water Control and Improvement District (WCID) No. 1's ("Respondent" or "the District") Water Certificate of Convenience and Necessity (CCN) No. 12362 in Grayson County, Texas pursuant to Section 13.254(a-1) of the Texas Water Code (TWC).

BACKGROUND

Petitioner owns approximately 1250 acres in Grayson County that is not in a platted subdivision actually receiving water. Petitioner's property is located within the water CCN No. 12362 of the District. On May 24, 2006, DDI submitted a written request for water service to the District. DDI's requested service contained 5 phases of

development beginning in January 2007 and ending in January 2009.¹ On June 20, 2006, the District's engineer sent a response to the request for service stating that the District was eager to provide the service to the proposed development and provided preliminary estimates based upon the level and manner of service DDI submitted in its phased request. The District also requested more detailed information regarding the requested service needs and asked DDI to submit a "Non-Standard Service Contract."

On December 15, 2006, Petitioner filed a petition with the TCEQ for expedited release from the District's water CCN No. 12362. The Petition alleges that it intends to develop a master planned community of 2,300 residential lots and the future development of a hotel, condominiums and a restaurant; alleges that the District is not in a good position to add new connections to its system due to a lack of excess capacity and thus is incapable of providing DDI service on a continuous and adequate basis within the time frame, at the level, or in the manner reasonably needed or requested by current and projected service demands in the area; alleges that the District has conditioned the provision of service to the property on the payment of costs not properly allocable directly to Petitioner's Service demands; alleges that Petitioner has the commitment of an alternative water provider, Double Diamond Utility, Inc. (DDU); and alleges that DDU can provide the level and manner of service that DDI requires at a fraction of the cost estimates provided by the District.

¹ **Phase I** - to be completed by January 2007 (681 residential properties); **Phase II** - to be completed by July 2007 (418 residential properties, a sales office and, corporate meeting facility); **Phase III** - to be completed by January 2008 (473 residential properties, 30 condominiums, a ship store, swimming pool, marina, and bathhouse); **Phase IV** - to be completed by July 2008 (346 residential properties, 100 room hotel, 50 condominiums, and restaurants); and **Phase V** - to be completed by January 2009 (222 residential properties, 100 room hotel expansion).

**PETITION OF DOUBLE DIAMOND
FOR EXPEDITED RELEASE FROM
CCN NO. 12362 (NW GRAYSON WCID NO. 1).**

On December 26, 2006, Mr. Arturo D. Rodriguez, Jr., the attorney for the District, provided a response to the Petition rebutting the allegations of the Petition and demanding that the Petition be returned for alleged deficiencies in the petition.

On December 27, 2006, a Notice of Deficiency (NOD) letter was sent to DDI requesting additional information with a response deadline of January 26, 2007. On January 24, 2007, the Petitioner responded to the December 27, 2006, NOD with additional information.

On February 7, 2007, the Petition was accepted for filing by the Executive Director. On February 9, 2007, the Executive Director requested more information from DDI. After numerous submissions from the Petitioner and the District, on March 13, 2007, Petitioner notified the Executive Director that the parties wished to abate consideration of the Petition in order to attempt mediation of the issues in controversy.

On May 25, 2007, Petitioner provided a request to resume consideration of the Petition which stated that mediation had not been successful. The Executive Director began processing the Petition again on May 26, 2007.

A final NOD was sent to Petitioner on June 15, 2007, requesting information which would explain the apparent discrepancies between the level and manner of service requested of the District in DDI's initial request for service and the much reduced level and manner of service being applied for by DDI in its application for approval of DDU's

plans and specifications.² The Executive Director received DDI's response to the final NOD on June 25, 2007.³

According to 30 Tex. Admin. Code (TAC) § 291.113(d), within 90 days from the date the Commission determines that a Petition for expedited release from a CCN is administratively complete, the Commission or Executive Director shall grant the Petition, unless the Executive Director or the Commission finds that the Petitioner failed to satisfy the elements of subsection (b) of 30 TAC § 291.113.

After considering the petition and all relevant information submitted by the Petitioner and the Certificate holder, the Executive Director finds that Petitioner, Double Diamond, Inc., failed to satisfy the elements of 30 TAC § 291.113(b) required for an expedited release from CCN No. 12326 of Northwest Grayson County WCID No. 1.

30 TAC § 291.113(b)(3) requires a Petitioner for expedited release to show that the Certificate Holder: (A) has refused to provide service; (B) is not capable of providing the service on a continuous and adequate basis within the time frame, at the level, or in the manner reasonably needed or requested by current and projected service needs in the

² DDI has separate applications for approval of plans and specs for the proposed water system to be operated by DDU. DDI's engineer has consistently sought approval for far less capacity requirements and at a significantly slower timeline indicated by DDI in its written request for service to the District.

³ Letter from DDI dated, June 25, 2007 (in response to NOD dated June 15, 2007), the total number of connections required changed from 1,099, to be completed by July 2007, to 477 residential lots. **New Phase I** (changed from 681 residential properties in January 2007, to 477 residential lots in March 2007 and an additional 100 residential lots in September 2007); **New Phase II** (changed from 418 residential properties, a sales office and corporate meeting facility in July 2007, to 580 residential lots in July 2008). **New Phase III** (changed from 473 residential properties, 30 condominiums, ships store, swimming pools, marina and bathhouse in January 2008 to 518 residential lots, a sales office, and corporate meeting facility by July 2009); **New Phase IV** (changed from 346 residential properties, 100 room hotel, 50 condominiums, and restaurant to be completed by July 2008, to 473 residential lots 30 condominiums, ships store, swimming pools, marina and bathhouse by July 2010); **New Phase V** – (changed from 222 residential properties, 100 room hotel expansion, 50 condominiums, to be completed by January 2009, to 346 residential lots, 100 room hotel, 50 condominiums, and restaurant in July 2011); **Phase VI** has been added which was not in the original request (100 room hotel expansion, and 50 condominiums by July 2012).

area; or (C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the Commission.

30 TAC § 291.113(b)(4) requires that a Petitioner for expedited release must additionally show that its alternate retail public utility from which the petitioner will be requesting service is capable of providing the service on a continuous and adequate basis within the time frame, at the level, and in the manner reasonably needed or requested by current and projected service needs in the area. Additionally, the alternate retail public utility must be an existing retail public utility or a district that is proposed to be created.

With respect to the elements required to be met by the Petitioner in subsection (b) of 30 TAC § 291.113, THE EXECUTIVE DIRECTOR MAKES THE FOLLOWING EXPRESS FINDINGS AND CONCLUSIONS:

1. 30 TAC § 291.113(b)(3)(A) - Petitioner has failed to show that the District has refused to provide service. On July 20, 2006, the District provided a response (petition exhibit H) indicating they were eager to provide service to the proposed development. Cost estimates for providing water service to the requested development in phases were included with the District's response. In a letter dated February 5, 2007, Kerry D. Maroney, P.E., (the District's Engineer) stated, "The District has never refused to provide water service to DDI. In fact the District has always affirmatively stated that it has the ability and desire to provide service to DDI." DDI did not provide a response to Mr. Maroney's letter.
2. 30 TAC § 291.113(b)(3)(B) - Petitioner has failed to show that the District is not capable of providing the service on a continuous and adequate basis within the time frame, at the level, or in the manner reasonably needed or requested by

current and projected service needs in the area. In its written request for service to the District, DDI did not provide the district with an accurate timeline for which water service would be needed. Since filing the petition, DDI has amended its timeline for requested service and has submitted plans for a water plant which does not meet the level and manner of service it requested of the District. DDI requested the District to provide service for 1,099 connections by July 2007, yet DDI only submitted plans for a water plant that would support 200 connections. No distribution system has been approved by the Commission. DDI has since amended its timeline to reflect an extended timeline for service, but still only has the capability to currently meet the demands required of a 200 connection system, without any distribution. Mr. Kerry Maroney the District's engineer, has indicated in a letter dated February 5, 2007, that the District currently owns and operates water facilities required to immediately provide phased-in water service to the development. The District has excess elevated storage tank capacity to serve an additional 346 connections, has excess well capacity to serve an additional 479 connections, has excess service pump and ground storage tank capacity to serve an additional 546 connections, and has distribution lines within 1,800 feet of the proposed development. The District is working with Greater Texoma Utility Authority (GTUA) to acquire 2000 acre-feet of surface water from Lake Texoma by the end of 2008 to supplement its groundwater supply. The District proposes to construct a surface water treatment facility from which an estimated 1966 new service connections could be served. DDI has failed to provide any credible evidence that the District cannot meet any of the timelines

proposed by DDI. DDI has not shown that the cost estimates provided by the District do not meet the level and manner of service needed, because the Executive Director has been unable to determine what effect the changing timeline would have on the District's estimated costs to provide the service.

3. 30 TAC § 291.113(b)(3)(C) - Petitioner has failed to show that the District has conditioned the provision of service on the payment of costs not properly allocable directly to the petitioner's service request. The Petitioner has changed the timeline for which service was originally requested. The Petitioner has not formally provided the District with a request for service based on the revised timeline provided in the June 25, 2007, letter. The District has not been given the opportunity to revise the original estimate for providing service. DDI's amended timeline may obviate the need for the costs which DDI claims are not properly allocable to its development. The District's engineer states that "the less than \$4,000,000 estimate was a preliminary estimate (dated July 20, 2006) to provide water service to 1,099 connections by July 2007 as requested by DDI. It included the construction (on an accelerated schedule) of all facilities including a 500,000 gallon elevated tank and water supply wells from a proven groundwater supply area that will meet all TCEQ standards." Additionally, the general manager of the District states in an affidavit that the cost information provided by Mr. Maroney relates only to construction of facilities needed to serve solely the development proposed by DDI and that DDI, by utilizing the proposed plan developed by Mr. Maroney, will not be required to pay a capital contribution fee to the District.

4. 30 TAC § 291.113(b)(4) - Petitioner has failed to show that its alternate retail public utility, Double Diamond Utilities Company, is capable of providing the service on a continuous and adequate basis within the time frame, at the level, and in the manner reasonably needed or requested by current and projected service needs in the area. The nearest DDU water system is located in Cleburne, Texas, approximately 137 miles from the proposed development. DDI, not DDU, has submitted plans for a proposed water plant capable of providing service to only 200 connections. Neither DDI nor DDU have submitted plans for a distribution system supporting the approved water system of 200 connections or the rest of the development. The level and manner of service and timeline estimated and requested by DDI in its plans submitted for its water plant do not meet the level and manner or the timeline it submitted to the District in its written request for service.

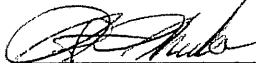
NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The petition from Double Diamond, Inc., for an Expedited Release from Certificate of Convenience and Necessity (CCN) No. 12362 of Northwest Grayson County WCID 1 in Grayson County; Application No. 35564-C, is hereby denied.
2. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.

3. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

ISSUE DATE: JUL 23 2007

TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

 7.23.2007
For the Commission

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Marisa Weber
Offices of the Chief Clerk

Date: July 20, 2007

From: Felicia Garcia
Administrative Support
Water Supply Division

Subject: Item for the Executive Director's Signature

Northwest Grayson County WCID 1 in Grayson County – Application Number
35564-C, CCN: 12362, CN : 600631501, RN: 101395119

The item listed above is for the Executive Director's Signature. Please present this to
Marisa Weber.

Contact Name: Ross Henderson

Date Stamp This Page Only

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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CHIEF CLERKS OFFICE